

# Order

**Michigan Supreme Court  
Lansing, Michigan**

October 18, 2005

Clifford W. Taylor,  
Chief Justice

ADM File No. 2003-19

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

Amendment of Rule 1.15  
of the Michigan Rules of  
Professional Conduct

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On order of the Court, the amendment of Rule 1.15 of the Michigan Rules of Professional Conduct that entered June 15, 2005, and adopted only the interest-rate parity amendment, is vacated, and the following order adopting the language of Alternative A, which was published for comment on June 15, 2005, is adopted, effective immediately.

[MRPC 1.15 is replaced with the following new language.]

## Rule 1.15 Safekeeping Property

### (a) Definitions.

- (1) “Allowable reasonable fees” for IOLTA accounts are per check charges, per deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, sweep fees, and a reasonable IOLTA account administrative or maintenance fee. All other fees are the responsibility of, and may be charged to, the lawyer maintaining the IOLTA account. Fees or charges in excess of the interest or dividends earned on the account for any month or quarter shall not be taken from interest or dividends earned on other IOLTA accounts or from the principal of the account.
- (2) An “eligible institution” for IOLTA accounts is a bank or savings and loan association authorized by federal or state law to do business in Michigan, the deposits of which are insured by an agency of the federal government, or is an open-end investment company registered with the Securities and Exchange Commission authorized by federal or state law to do business in Michigan. The eligible institution must pay no less on an IOLTA account than the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when the IOLTA account

meets the same minimum balance or other eligibility qualifications. Interest or dividends and fees shall be calculated in accordance with the eligible institution's standard practice, but institutions may elect to pay a higher interest or dividend rate and may elect to waive any fees on IOLTA accounts.

- (3) "IOLTA account" refers to an interest- or dividend-bearing account, as defined by the Michigan State Bar Foundation, at an eligible institution from which funds may be withdrawn upon request as soon as permitted by law. An IOLTA account shall include only client or third person funds that cannot earn income for the client or third person in excess of the costs incurred to secure such income while the funds are held.
  - (4) "Non-IOLTA account" refers to an interest- or dividend-bearing account from which funds may be withdrawn upon request as soon as permitted by law in banks, savings and loan associations, and credit unions authorized by federal or state law to do business in Michigan, the deposits of which are insured by an agency of the federal government. Such an account shall be established as:
    - (A) a separate client trust account for the particular client or matter on which the net interest or dividend will be paid to the client or third person, or
    - (B) a pooled client trust account with subaccounting by the bank or savings and loan association or by the lawyer, which will provide for computation of net interest or dividend earned by each client or third person's funds and the payment thereof to the client or third person.
  - (5) "Lawyer" includes a law firm or other organization with which a lawyer is professionally associated.
- (b) A lawyer shall:
- (1) promptly notify the client or third person when funds or property in which a client or third person has an interest is received;
  - (2) preserve complete records of such account funds and other property for a period of five years after termination of the representation; and

- (3) promptly pay or deliver any funds or other property that the client or third person is entitled to receive, except as stated in this rule or otherwise permitted by law or by agreement with the client or third person, and, upon request by the client or third person, promptly render a full accounting regarding such property.
- (c) When two or more persons (one of whom may be the lawyer) claim interest in the property, it shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.
- (d) A lawyer shall hold property of clients or third persons in connection with a representation separate from the lawyer's own property. All client or third person funds shall be deposited in an IOLTA or non-IOLTA account. Other property shall be identified as such and appropriately safeguarded.
- (e) In determining whether client or third person funds should be deposited in an IOLTA account or a non-IOLTA account, a lawyer shall consider the following factors:
  - (1) the amount of interest or dividends the funds would earn during the period that they are expected to be deposited in light of (a) the amount of the funds to be deposited; (b) the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held; and (c) the rates of interest or yield at financial institutions where the funds are to be deposited;
  - (2) the cost of establishing and administering non-IOLTA accounts for the client or third person's benefit, including service charges or fees, the lawyer's services, preparation of tax reports, or other associated costs;
  - (3) the capability of financial institutions or lawyers to calculate and pay income to individual clients or third persons; and
  - (4) any other circumstances that affect the ability of the funds to earn a net return for the client or third person.
- (f) A lawyer may deposit the lawyer's own funds in a client trust account only in an amount reasonably necessary to pay financial institution service charges or fees or to obtain a waiver of service charges or fees.

- (g) Legal fees and expenses that have been paid in advance shall be deposited in a client trust account and may be withdrawn only as fees are earned or expenses incurred.
- (h) No interest or dividends from the client trust account shall be available to the lawyer.
- (i) The lawyer shall direct the eligible institution to:
  - (1) remit the interest and dividends from an IOLTA account, less allowable reasonable fees, if any, to the Michigan State Bar Foundation at least quarterly;
  - (2) transmit with each remittance a report that shall identify each lawyer for whom the remittance is sent, the amount of remittance attributable to each IOLTA account, the rate and type of interest or dividends applied, the amount of interest or dividends earned, the amount and type of fees deducted, if any, and the average account balance for the period in which the report is made; and
  - (3) transmit to the depositing lawyer a report in accordance with normal procedures for reporting to its depositors.
- (j) A lawyer's good-faith decision regarding the deposit or holding of such funds in an IOLTA account is not reviewable by a disciplinary body. A lawyer shall review the IOLTA account at reasonable intervals to determine whether changed circumstances require the funds to be deposited prospectively in a non-IOLTA account.

Staff Comment: The amendment of MRPC 1.15 conforms with the decision in *Brown v Legal Foundation of Washington*, 538 US 216; 123 S Ct 1406; 155 L Ed 2d 376 (2003), to create interest rate parity with non-IOLTA investments consistent with changes in financial products presently available in the market, and to make other revenue-enhancing modifications to the IOLTA program.

The staff comment is not an authoritative construction by the Court.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 18, 2005

*Corbin R. Davis*  
Clerk